

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2725 – SB 2580

April 18, 2012

SUMMARY OF AMENDMENTS (016890, 015085): Requires the Department of Human Services (DHS) to, unless overturned by a federal court, implement a program of substance abuse testing for each adult applicant who is otherwise eligible for Temporary Assistance for Needy Families (TANF) or a successor program, by requiring the results of a clean urine drug test performed within the previous 45 days from the date of application. Requires DHS to institute and require urine drug test for each individual who receives or applies for TANF, if the Department has reason to believe that such individual has used illegal drugs. The following shall be considered grounds for a suspicion-based urine drug test: a recipient is arrested and/or convicted for a violation of a drug or alcohol-related offense; a recipient fails a Substance Abuse Subtle Screening Inventory test or any other substance abuse test; a recipient is unsuccessful in a job search that lasts for more than six months; or application for TANF benefits. Specifies that any costs arising from grounds for a suspicion-based urine drug test shall be borne by the applicant, including the cost of a confirmation test, criminal background checks, Substance Abuse Subtle Screening Inventory tests, and any contacts with prior or current employers of the applicant. Requires each applicant to sign a written acknowledgment of the above provisions. Defines “drug” as marijuana, cocaine, methamphetamine, amphetamine, opiates such as morphine, and any additional controlled substances added by the Commissioner of DHS. Defines a “five panel test” as a test for marijuana, cocaine, methamphetamine, amphetamine, and opiates, such as morphine and states that a five panel test for adult applicants for TANF is sufficient for compliance with the testing requirement of this act. Requires DHS to provide notice that the drug test may be avoided if the individual chooses not to apply for TANF. Requires that one parent in two-parent families and any teen parent not living with a parent, legal guardian, or other adult caretaker to comply with the drug testing requirement. Requires all drug tests to be performed by licensed diagnostic companies approved by DHS. Requires a confirmatory second test for individuals who fail the initial test. Prohibits an individual who has tested positive from receiving benefits for one year, unless the individual completes a substance abuse treatment program and tests negative twice at least thirty days apart. In such cases, the individual can reapply for benefits after six months of the initial test. Prohibits an individual who has tested positive after reapplying for the benefits from receiving such benefits for a period of three years, unless the individual completes a substance abuse treatment program and tests negative twice at least thirty days apart. Specifies that a child’s eligibility for public assistance benefits is not affected if the child’s parent is deemed ineligible, and sets the qualifying criteria for a protective payee. Exempts individuals employed by an employer who participates in the Drug Free Workplace Act and who successfully passed a drug test within 45 days of applying for benefits from the requirements of this act. Protects the confidentiality of information concerning drug test results.

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Specifies that any funds allocated to a TANF recipient who fails to comply with the requirements of this act, or any funds that would have been allocated to a TANF applicant who fails to comply with the requirements of this act, may be used to administer the provisions of this act and to provide drug testing pursuant to this act. Authorizes any funds allocated to a TANF recipient who, without good cause, fails to comply with TANF's work or training requirements to be used to defray the costs of administering the provisions of this act and to provide drug testing pursuant to this act. Authorizes any funds of a TANF recipient who is not participating in a work or training program, allocated for such purposes, to be used to administer the provisions of this act and to provide drug testing pursuant to this act. Authorizes DHS to allocate any of the above funds to persons for whom it would be a financial hardship to pay for such drug tests.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$244,600/FY12-13
\$186,500/FY13-14
\$172,300/FY14-15 and Subsequent Years

Other Fiscal Impact – The total decrease in recurring state expenditures from benefit sanctions as a result of the new eligibility requirement is estimated to be \$1,280,040. These TANF funds, not expended due to applicant sanctions, can be utilized by DHS in administering the drug testing program. However, according to DHS, the Department is already at the cap of allowable administrative costs for TANF and any cost avoidance resulting from this bill would be used to serve TANF eligible clients, resulting in an equal increase in recurring state expenditures, for a net impact of zero on TANF funds. It is anticipated that passage of this bill would result in legal action against the state, with litigation costs exceeding \$100,000.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Other Fiscal Impact – The total decrease in recurring state expenditures from benefit sanctions as a result of the new eligibility requirement is estimated to be \$1,799,900. The total increase in state expenditures associated with administering the drug testing program is estimated to be \$382,500 in FY12-13, \$419,900 in FY13-14, and \$405,700 in FY14-15 and subsequent years. TANF funds not expended due to applicant sanctions will first be utilized by DHS to defray the costs of administering the drug testing program. Any funds remaining after defraying the costs of administering the test program will be used to serve TANF eligible clients. However, according to DHS, the Department is already at the cap of allowable administrative costs for TANF, and this cost shift from direct services to administrative costs could require the Department to seek additional state appropriations to offset the loss of direct services funds. It is anticipated that passage of this bill would result in legal action against the state, with litigation costs exceeding \$100,000.

Assumptions applied to amendments:

- The cost of drug testing, including any confirmation tests, will be the responsibility of the individual tested. DHS will not reimburse any individuals for such cost.
- DHS will require an additional position to manage and coordinate the activities of the statewide program. The position will require extensive knowledge of drug testing procedures and be responsible for consulting with staff on interpretation of test results. The recurring increase in state expenditures associated with this position will be \$74,709 for salary (\$54,600), benefits and insurance (\$14,089) and office supplies and connections (\$6,020). Half of this increase in expenditures, or \$37,355, will occur in FY12-13 due to the effective date of the program of January 1, 2013. A one-time increase in state expenditures of \$1,100 for wiring connections and equipment.
- Modifications of the current TANF eligibility system (ACCESS) will require 900 contracted hours for analysis, design and testing at a cost of \$79 per hour, for a total one-time increase in state expenditures of \$71,100 (900 x \$79). Maintenance on the current system will be performed for one year, resulting in an increase in one-time state expenditures of \$14,220 (\$71,100 x 20%) in FY13-14.
- Modification of the TANF eligibility system (VIP) which will replace the current ACCESS system will also require 900 contracted hours for analysis, design and testing at a cost of \$101 per hour, for a total one-time increase in state expenditures of \$90,900 (900 x \$101). A recurring increase in state expenditures for maintenance cost will be \$18,180 (\$90,900 x 20%).
- Because those individuals who are identified to be tested have an increased chance to cause disruptions, DHS requires security at larger county offices. Security is already provided for the large urban offices, so DHS estimates that 10 security guards will be needed to guard the most populous rural offices during regular business hours.
- According to DHS, the current contract rate for a security guard is \$10.63 per hour. This will result in a recurring increase in state expenditures of \$225,888 (10 guards x 8.5 hours per day x \$10.63 per hour x 250 business days). Half of this increase in expenditures, or \$112,944, will occur in FY12-13 due to the effective date of the program of January 1, 2013.
- DHS will contract with a vendor to develop training to enable staff to consistently recognize a reasonable suspicion that the adult engages in illegal use of illicit drugs. One-time state expenditures associated with the training will be \$25,000 with a recurring increase in state expenditures of \$7,500 for annual training beginning in FY13-14.
- According to DHS, the average monthly amount of benefits for an adult TANF client is approximately \$40.
- According to DHS, there are approximately 48,000 adult individuals eligible for TANF benefits every year. The proposed legislation will require all 48,000 to undergo testing for substance abuse, or provide the results of a recent urine drug test.
- Further, it is estimated that DHS will require additional 10,000 recipients of TANF benefits to undergo drug testing based on a reasonable suspicion of illegal drug use.
- Exempting individuals employed by an employer who participates in the Drug Free Workplace Act and who successfully passed a drug test within 45 days of applying from benefits from the requirements of this act will not result in a significant decrease in the estimated number of people tested.

- The total number of adults estimated to be tested or required to provide the results of a recent drug test is estimated to be 58,000.
- According to the Centers for Disease Control and Prevention, 8.7 percent of individuals 12 years of age and over reported illicit drug use in the past month.
- Since individuals chosen to be tested based on a reasonable suspicion are presumably more likely to test positive for illicit drug use, it is estimated that approximately 10 percent, or 5,800 adults, will test positive for illegal drug use ($58,000 \times 10\%$).
- DHS estimates that approximately 25 percent, or 1,450, will be adults testing positive for TANF child-only cases which will not lead to a sanction of benefits.
- It is further estimated that the new eligibility requirement will result in approximately 1,900 new appeals, with a 15 percent, or 285, success rate. DHS will be required to provide benefits retroactive to the date of application for those individuals. The average length of time for an appeal is approximately 90 days, or 3 months of benefits. As a result, DHS will retroactively expend \$34,200 ($285 \times \40×3).
- It is estimated that one additional position will be required to conduct the hearings for these new appeals. The recurring increase in state expenditures associated with this position will be \$79,430 for salary (\$55,200), benefits and insurance (\$14,180) and office supplies and connections (\$10,050). Half of this increase in state expenditures, or \$39,715, will occur in FY12-13 due to the effective date of the program of January 1, 2013. A one-time increase in state expenditures of \$4,400 for office furniture and equipment.
- Approximately 4,065 ($5,800 - 1,450 - 285$) will be subject to sanctions of one year in length. It is estimated that 80 percent of such individuals, or 3,252, will seek substance abuse treatment.
- Based on information presented in a 2007 study conducted by the University of Memphis, *Substance Abuse Treatment Effectiveness in Tennessee: 2005-2006 Statewide Treatment Outcomes Evaluation*, approximately 20 percent of individuals applying for drug treatment found an opening in a program to receive treatment. Approximately 75 percent of such individuals successfully completed the program.
- It is estimated that 488 individuals ($3,252 \times 20\% \times 75\%$) will successfully complete a drug treatment program and will be able to reapply and receive benefits after six months from the date of the original application.
- The total six-month benefit sanctions for these individuals will be \$117,120 ($488 \times \40×6).
- The remaining 3,577 individuals ($5,800 - 1,450 - 285 - 488$) will be sanctioned for a full year, for a total of \$1,716,960 ($3,577 \times \40×12).
- The total decrease in recurring state expenditures resulting from sanctions as a result of the new eligibility requirement will be \$1,799,880 ($\$117,120 + \$1,716,960 - \$34,200$).
- The total increase in state expenditures in FY12-13 will be \$382,514 ($\$37,355 + \$1,100 + \$71,100 + \$90,900 + \$112,944 + \$25,000 + \$39,715 + \$4,400$).
- The total increase in state expenditures in FY13-14 will be \$419,927 ($\$74,709 + \$14,220 + \$18,180 + \$225,888 + \$7,500 + \$79,430$).
- The total increase in state expenditures in FY14-15 and subsequent years will be \$405,707 ($\$74,709 + \$18,180 + \$225,888 + \$7,500 + \$79,430$).

- TANF funds not expended due to applicant sanctions will first be utilized by DHS in administering the drug testing program. However, according to DHS, the Department is already at the cap of allowable administrative costs for TANF, and this cost shift from direct services to administrative costs could require the Department to seek additional state appropriations to offset the loss of direct services funds. Any funds remaining after defraying the costs of administering the test program will be used to serve TANF eligible clients.
- DHS anticipates that passage of this bill would result in legal action against the state, with litigation costs exceeding \$100,000. A 2003 Federal Court of Appeals decision (*Marchwinski v. Howard*) enjoined Michigan from conducting suspicionless drug testing, ruling that the process, without probable cause, violated the Fourth Amendment to the U.S. Constitution, since the program did not meet the criteria for exceptions to the Fourth Amendment. Further, a similar law was passed in Florida in 2010, but resulted in a lawsuit (*Lebron v. Wilkins*) which concluded that, among other things, Florida did not show that the drug testing program meets the criteria for exceptions to the Fourth Amendment, and resulted in blocking the State of Florida from conducting drug testing of welfare recipients.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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